IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 3473 of 2007()

CRRP.09/2006 of ADDL.SESSIONS COURT (ADHOC)III, MANJERI
CMP.75/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, PERINTHALMANNA

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PETITIONER: ACCUSED

KODOMPETTA VASUDEVAN, S/O.LATE
GOVINDAN NAIR, AGED 56 YEARS,
POURNEMI VEEDU, NADULATH VANDOOR POST, NILAMBUR,
GODOWN-KEEPER, SECOND H.C., KERALA STATE WARE
HOUSING CORPORATION, KARUVAHBRAM, MANJERI,
ERNAD TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: PETITIONER/STATE

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1. KODOMPATTA RADHAKRISHNAN NAIR,
S/O.LATE GOVINDAN NAIR, SURVEYOR, RUBBER BOARD,
DEEPIKA HOUSE, KARUVAMBRAM, MANJERI,
ERNAD TALUK, MALAPPURAM DISTRICT.

2. THE STATE OF KERALA, REPRESENTED
BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
HIGH COURT BUILDINGS, ERNAKULAM, COCHIN-682 031.

R2 BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3473 of 2007

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Dated this the 3rd day of December, 2007

O R D E R

The petitioner is aggrieved by the concurrent orders, under which a private complaint filed by him was dismissed by the learned Magistrate under Section 203 Cr.P.C. and the challenge against the said order in revision was also repelled. The petitioner, evidently because a second revision is not maintainable, has now come to this Court with this petition under Section 482 Cr.P.C. to invoke the extra ordinary inherent jurisdiction to set aside both the orders and to direct the learned Magistrate to take cognizance and issue process under Section 204 Cr.P.C.

2. Against the petitioner herein, his brother one Radhakrishnan, had filed a complaint under Section 138 of the N.I. Act. Cognizance was taken. It is submitted that the said prosecution has ended in conviction now. Notice of demand was admittedly served on the petitioner. He had admittedly not responded. After cognizance was taken in that prosecution under

Section 138 of the N.I. Act, the petitioner chose to file a private complaint against the said Radhakrishnan, his brother, and also his nephew (sister's son). In such complaint, he alleged that the cheque was stolen from his possession by the accused and was misutilised by the first respondent to launch a false prosecution against him under Section 138 of the N.I. Act.

3. The learned Magistrate received the complaint. The sworn statements of CWs. 1 to 4 were recorded by the learned Magistrate. Allegations were raised that the cheque was stolen by the first respondent herein in collusion with his nephew and the cheque was forged to launch a false complaint under Section 138 of the Act.

4. The learned Magistrate considered the materials before him and as per order dt. 5.11.2005 proceeded to dismiss the complaint under Section 203 Cr.P.C. The challenge against that order was dismissed by the learned Sessions Judge by order in the Crl.R.P. 9 of 2006.

5. The crux of the contentions of the petitioner now before me is that the learned Magistrate had erred grossly and perversely in not

issuing process under Section 204 Cr.P.C. and in dismissing the complaint under Section 203 Cr.P.C.

6. In this revision petition, the second accused, the nephew of the petitioner, has not been arrayed as a party. I shall ignore that technicality. I must alertly remind myself of the nature, quality and contours of the jurisdiction under Section 482 Cr.P.C. The jurisdiction which is sought to be invoked is the extra ordinary inherent jurisdiction, which has to be invoked sparingly and in aid of justice. Such jurisdiction is not to be invoked as a matter of course.

7. Law does not permit a second revision by a party, who has already moved the Court of Sessions in revision. Obviously realising that a second revision is not maintainable, this Crl.M.C. under Section 482 Cr.P.C. has been filed by the petitioner. Powers under Section 482 Cr.P.C. cannot obviously be invoked to entertain a second challenge in revision.

8. I have gone through the impugned orders. I am unable to find any vice vitiating the concurrent findings under Section 203 Cr.P.C. that the complaint is liable to be dismissed. At the stage of

Section 203 Cr.P.C. the court has a sublime function to perform. A bonafide complainant, who has a genuine grievance must be given a fuller opportunity to substantiate his grievance. At the same time, a complainant, who does not have bonafides and who is attempting to abuse the process of Court, must be deterred at the threshold. I do note after going through the impugned orders that the learned Magistrate had exercised his jurisdiction alertly and correctly too. It does not require the wisdom of Solomon to identify that the petitioner was attempting to steal a march over the complainant and his nephew by initiating this false prosecution against them. I note that the learned Magistrate has considered the sworn statements of the four witnesses examined and had come to the conclusion that there is no sufficient ground to proceed against the accused persons. At the threshold the court must be satisfied that the complainant has come to Court bonafide and that the allegations raised by him reveals "sufficient ground to proceed against the accused."

9. The silence of the petitioner on receipt of the notice of demand, the fact that this prosecution was initiated belatedly, the fact

that the petitioner has advanced a rather improbable story of theft, that the petitioner has raised a contention that he had signed a number of chdques and handed over to CW4 and that CW4 had returned the same to the complainant have all been taken due notice of the learned Magistrate and the Sessions Judge in coming to the conclusion that there is no sufficient ground to proceed further on the basis of the complaint filed by the petitioner.

10. I am satisfied that the impugned orders suffer from no vice to justify invocation of the jurisdiction under Section 482 Cr.P.C.

11. This Crl.M.C. is accordingly dismissed.

(R. BASANT)
Judge

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